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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] '49

No. [redacted] 41

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC. and ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ET AL., *Appellees*.

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM.

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IN THE

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OCTOBER TERM, 1948.

No. 630.

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, INC. and ALEXANDRIA, BARCROFT AND WASHINGTON TRANSIT COMPANY, *Appellants*,

v.

CAPITAL TRANSIT COMPANY, ET AL., *Appellees*.

BRIEF IN OPPOSITION TO MOTIONS TO DISMISS OR AFFIRM.

The Alexandria, Barcroft and Washington Transit Company and the Washington, Virginia and Maryland Coach Company, Inc., defendants-appellants in the above entitled causes, in accordance with Rule 7, paragraph 3, and Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States, submit this brief opposing the motions to dismiss or affirm the appeal heretofore filed by appellants.[1]

[1] Separate motions have been filed by Capital Transit Company, the Public Utilities Commission of the District of Columbia, and People's Counsel of the Public Utilities Commission of the District of Columbia. To avoid repetition the points raised in all motions will be treated together.

The appellees attempt to distinguish the case at bar from the earlier decision in *United States* v. *Capital Transit Company*, 325 U. S. 357, relying principally on three grounds.[2]

I.

Lower Court Erroneously Applied Sections 216(e) of the Interstate Commerce Act (Part II), (49 U. S. C. 316(e)) (Proviso) to the Evidence.

Part II of the Interstate Commerce Act Section 216 (e) (proviso) (49 U. S. C. 316(e)) which reads:

> *Provided, however,* that nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

The proviso of this section of the Act is a restriction upon the authority of the Commission to prescribe rates, fares or charges for intrastate transportation. The Interstate Commerce Commission by its orders of June 22, 1945 and July 7, 1948, exhibits A and L to complaint in No. 3052-48, did not fix or attempt to fix rates, fares or charges for intrastate transportation. The Commission by its orders referred to herein, fixed rates, fares and charges solely for interstate transportation.

Section 216(e) proviso, set out hereinabove, was an express limitation upon the Commission's authority, the Commission having the authority under Part I of the Act to

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[2] (1) The Interstate Commerce Commission is denied the right to prescribe the rates in issue by the terms of the statutory provisions of Part II of the Interstate Commerce Act, Section 216(e) (49 U. S. C. 316 (e)); (2) That the Interstate Commerce Commission could determine a national transportation policy under the provision of Section 203(b)(8) of the Act (49 U. S. C. 303(b)(8)) only in times of war. (3) That the operation of the appellee, Capital Transit Company in the case at bar is analogous to and indistinguishable from the operation of the Yellow Cab Company in the case of *United States* v. *Yellow Cab Company*, 332 U. S. 210.

regulate the rates, fares and charges for intrastate transportation with respect to the movement of railroad traffic.

The doctrine of the *Shreveport* case, *Houston East and West Texas Railway Company* v. *United States*, 234 U. S. 342, is distinguishable from the issue before this court in that in the case at bar the Interstate Commerce Commission had before it the regulation of rates, fares or charges for interstate transportation and not for intrastate transportation.

Part II of the Interstate Commerce Act, Section 216(e) proviso does not prevent the commission from regulating rates, fares or charges for transportation moving in interstate commerce.

II.

The Interstate Commerce Commission Has the Authority Under Section 203 (b)(8) of the Interstate Commerce Act to Formulate a National Transportation Policy.

The Interstate Commerce Commission has the authority to formulate a national transportation policy under authority vested in it by the Congress of the United States, which laws are fully set out in Part II of the Interstate Commerce Act, Section 203 (b)(8) (49 U. S. C. 303(b)(8)).

In furtherance of the said authority referred to hereinabove, the Interstate Commerce Commission did formulate a national transportation policy with respect to the issue at bar, and in carrying out that policy did regulate the interstate transportation of passengers between the District of Columbia and specified points in nearby Virginia.

The national transportation policy formulated by the Commission with respect to the issue at bar was upheld in *United States* v. *Capital Transit Company*, 325 U. S. 357.

III.

The Interstate Commerce Commission's Jurisdiction to Make a Rate Order With Respect to the Particular Traffic Involved is Res Judicata.

Because of fluctuating economic conditions, any specific rate order fixing a level of rates is never to be regarded as res judicata. It is abundantly clear that insofar as the question of the Commission's jurisdiction and authority to make rate orders with respect to the particular traffic involved here is concerned, the decision in *United States* v. *Capital Transit Company*, 325 U. S. 357 is res judicata.

The Commission's order of June 22, 1945 was promulgated in furtherance of the decision in *United States* v. *Capital Transit Company*, 325 U. S. 357. Thereafter, the Commission did on July 7, 1948 modify its order of June 22, 1945 due to the change brought about by the economic conditions of the country.

The case of *United States* v. *Yellow Cab Company*, 332 U. S. 218,[3] has no application to the issue at bar since the court there found that the transportation provided by the Yellow Cab Company was intrastate transportation as distinguished from interstate transportation such as found in *United States* v. *Capital Transit Company*, 325 U. S. 357, where at page 363 the Court stated:

> "As previously pointed out, twice a day more than 15,000 government employees traveled between the Virginia agencies and their homes via one of the four bus systems. Most of them either went to or from these bus terminals from or to their homes over any of Transit's then available buses or streetcars. Their travel was at certain hours each day, at which special rush hour, buses and cars were made available for their carriage. Their interstate journey to work actually began at the time they boarded a Transit bus or streetcar near their home, and actually ended when they alighted from the Virginia going bus at their

[3] Motion of Capital Transit Company, p. 6.

place of work. On returning from work their interstate journey actually began when they boarded a bus near their work and actually ended when they alighted from a Transit streetcar or bus near their home. True, their interstate trip was broken at the District termini of the Virginia buses, when they stepped from one vehicle to another. But in the commonly accepted sense of the transportation concept, their entire trip was interstate. Baltimore & O. S. W. R. R. Co. v. Settle, 260 U. S. 166, 43 S. Ct. 28, 67 L. Ed. 189. And the fact that except as to Transit, they paid a combination of two rates, one for travel wholly within the District, and the other for travel between the District and Virginia, and the journey from their residences to Virginia and back again was taken in two segments, does not mean that the total interstate trip was not on a 'through route'. Virginian Ry. v. U. S., 272 U. S. 658, 666, 667, 47 S. Ct. 222, 225, 71 L. Ed. 463; St. Louis S. W. Ry. Co. v. United States, 245 U. S. 136, 139, 140, 38 S. Ct. 49, 50, 62 L. Ed. 199."

IV.

Appellants Are Not Required to File Bonds on Appeal.

No bond to secure costs, interest or damages pending appeal has been filed since the amended statutes do not provide for cost bonds.[4]

A supersedeas bond is not required in this case because the District Court of the United States for the District of Columbia in staying the effective date of the final decree specifically provided that the provisions of the interlocutory injunction of the District Court of the United States for the District of Columbia, dated August 4, 1948, as amended by the order dated October 26, 1948, be continued in full force and effect pending such appeal and determination. Therefore, Appellee, Capital Transit Company is not aggrieved and would not be adversely affected during the pendency of the appeal. Capital Transit has been author-

[4] Act of June 25, 1948, C646, Sec. 39, 62 Stat. 992, eff. September 1, 1948.

ized and is now collecting the full amount of its local intrastate fares as ordered by the Public Utilities Commission of the District of Columbia.

CONCLUSION.

Wherefore, the appellants, Alexandria, Barcroft and Washington Transit Company and the Washington, Virginia and Maryland Coach Company, Inc., for the foregoing reasons, in addition to the grounds set forth in appellants' statement as to jurisdiction, heretofore filed, pray that the appellee's motion to dismiss or affirm be denied.

Dated this 8th day of March, 1949.

Respectfully submitted,

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